

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00136-MR-WCM**

DARRYL K. MCMAHAN,

Plaintiff,

vs.

**LOWELL S. GRIFFIN, WESTERN
SURETY COMPANY, and KENNETH
B. CLAMSER,**

Defendants.

ORDER

THIS MATTER is before the Court on the parties' Stipulation of Partial Dismissal of Plaintiff's Claims and Joint Request to Remand to State Court. [Doc. 22].

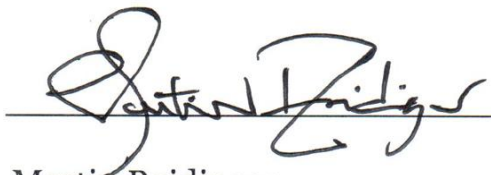
By the present Stipulation, the parties stipulate, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), to the dismissal of the following claims in this case: (1) the Plaintiff's claims made pursuant to 42 U.S.C. § 1983; (2) his claims under North Carolina law for malicious prosecution and abuse of process; and (3) his claims for negligence against Deputy Clamser in his individual capacity. With the dismissal of these claims, the only claims remaining in this case are the Plaintiff's state claims for negligence against Sheriff Griffin in his official capacity and Western Surety Company. The parties therefore jointly move

that this action be remanded to state court for further proceedings with respect to these remaining state law claims. This present action, however, was not removed from a state court but rather was filed here as a civil action. [See Doc. 1]. Accordingly, the Court construes the parties' joint request for remand as a joint motion to dismiss the Plaintiff's remaining state claims without prejudice to refiling the same in the appropriate state court.

IT IS, THEREFORE, ORDERED that the parties' Joint Request to Remand to State Court [Doc. 22], which the Court construes as a Joint Motion to Dismiss, is **GRANTED**, and the Plaintiff's negligence claims against Sheriff Griffin in his official capacity and Western Surety Company are hereby **DISMISSED WITHOUT PREJUDICE** to refiling the same in the appropriate state court.

IT IS SO ORDERED.

Signed: August 17, 2023



Martin Reidinger
Chief United States District Judge

